General Assembly	**_Amendment_**
January Session, 2001	LCO No. **8134**

Offered by:
  REP. LAWLOR, 99th Dist.
  REP. DOYLE, 28th Dist.
  REP. MARTINEZ, 95th Dist.

To: Subst. House Bill No. **6536**   File No. 522   Cal. No. 368

"AN ACT CONCERNING EXECUTION UPON FUNDS IN BANK ACCOUNTS WHICH ARE EXEMPT FROM EXECUTION."

1   In line 38, strike "government" and insert the following in lieu
2   thereof:

3   "federal veterans' benefits, Social Security benefits, including, but
4   not limited to, retirement, survivors' and disability benefits or
5   supplemental security income"

6   In line 39, strike "payments"

7   In line 41, strike ", except to the"

8   Strike line 42 in its entirety and insert the following in lieu thereof:

9   "leave the lesser of the account balance or eight hundred"

10   In line 43, strike "thousand" and after "account" insert the following:

11   "; provided nothing in this subsection shall be construed to limit a
12   bank's right or obligation to remove such funds from the debtor's
13   account if required by any other provision of law or by a court order"

14   In line 45, after "subsection." insert the following: "The banking
15   institution may notify the judgment creditor that funds have been left
16   in the judgment debtor's account pursuant to this subsection."

17   In line 47, after "this" strike "subsection" and insert "section" in lieu
18   thereof

19   In line 49, after "exemption." insert the following: "Nothing in this
20   subsection shall be construed to affect any other rights or obligations
21   of the banking institution with regard to the funds in the judgment
22   debtor's account."

23   In line 50, insert brackets before and after "Upon" and after the
24   closing bracket insert the following: "If any funds are removed from
25   the debtor's account pursuant to subsection (c) of this section, upon"

26   In line 68, after "(f)" insert "(1)"

27   After line 78, insert the following:

28   "(2) Upon receipt of notice from the banking institution pursuant to
29   subsection (c) of this section, a judgment creditor may, on an ex parte
30   basis, present to a judge of the Superior Court an affidavit sworn
31   under oath by a competent party demonstrating a reasonable belief
32   that such debtor's account contains funds which are not exempt from
33   execution and the amount of such nonexempt funds. Such affidavit
34   shall not be conclusory but is required to show the factual basis upon
35   which the reasonable belief is based. If such judge finds that the
36   creditor has demonstrated a reasonable belief that such debtor's
37   account contains funds which are not exempt from execution, such
38   judge shall authorize the judgment creditor to submit a written
39   application to the clerk of the court for a hearing on the exempt status
40   of funds left in the judgment debtor's account pursuant to subsection

41 (c) of this section. The judgment creditor shall promptly send a copy of
42 the application and the supporting affidavit to the judgment debtor.
43 Upon receipt of such application, the clerk of the court shall
44 automatically schedule the matter for a short calendar hearing and
45 shall give written notice to both the judgment creditor and the
46 judgment debtor. The notice to the judgment creditor pursuant to
47 subsection (c) of this section shall be prima facie evidence at such
48 hearing that the funds in the account are exempt funds. The burden of
49 proof shall be upon the judgment creditor to establish the amount of
50 funds which are not exempt."

51   In line 141, strike "in the amount of one thousand" and insert "of up
52 to eight hundred" in lieu thereof

53   In line 142, after "institution" insert "in good faith"

54   In line 151, after "fees" insert "by the bank"

55   In line 159, after "faith" insert the following: "or through the
56 commission of a bona fide error that occurred despite reasonable
57 procedures maintained by the banking institution to prevent such
58 errors"